

ST 00-0279-GIL 12/06/2000 MANUFACTURING MACHINERY & EQUIPMENT

This letter describes how the Manufacturing Machinery and Equipment Exemption and Manufacturer's Purchase Credit applies in regards to ready-mix concrete batch plants and ready-mix concrete trucks. See 86 Ill. Adm. Code 130.330 and 130.331. (This is a GIL).

December 6, 2000

Dear Xxxxx:

This letter is in response to your letter dated August 29, 2000. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are a ready mix concrete corporation. Per Ch. 1, Sec 130.330 of the Illinois Administrative Code, the purchase of manufacturing machinery and equipment is exempt from the Retailer's Occupation Tax and qualifies for a manufacturer's purchase credit. Please clarify and provide guidelines as to which items qualify as manufacturing machinery and equipment for Form ST-16.

- A. Ready mix concrete batch plant
- B. Repair parts for ready mix concrete batch plant
- C. Ready mix concrete batch plant computer batch system
- D. Support maintenance plan for computer batch system
- E. Ready mix concrete plant rock and sand bins
- F. Ready mix concrete plant cement silos
- G. Front-end loaders used to charge bins of ready mix concrete batch plant
- H. Repair parts for front-end loader used to charge bins of ready mix plant
- I. Tires for manufacturing ready mix concrete mixer trucks
- J. Batteries for manufacturing ready mix concrete mixer trucks
- K. Repair parts for manufacturing ready mix concrete mixer trucks
- L. Lease payments on manufacturing ready mix concrete mixer trucks
- M. Freight on repair parts on manufacturing ready mix concrete mixer trucks

If the manufacturers' purchase credit is taken at the time of purchase of ready mix concrete mixer trucks, loaders, and ready mix plants, is there a ruling or regulation giving the required retention period for this manufacturing equipment?

Please clarify and provide guidelines as to which items qualify to have the MPC tax credit applied.

- A. Oils, grease and other lubricants used in manufacturing machinery and equipment
- B. Cleaners used on manufacturing machinery and equipment
- C. Anti-freeze used in manufacturing ready mix concrete mixer trucks
- D. Fuel consumed in manufacturing ready mix concrete mixer trucks
- E. Manufacturing ready mix concrete mixer truck radios and radio repairs

We look forward to your response as soon as possible.

MANUFACTURING MACHINERY & EQUIPMENT & MPC

Machinery and equipment that is used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax. See the enclosed copy of 86 Ill. Adm. Code 130.330. Components of manufacturing machinery or equipment that are installed or utilized on manufacturing machinery or equipment, that qualify for the manufacturing machinery and equipment exemption, will also qualify for that exemption. See part (c) of the enclosed copy of 86 Ill. Adm. Code Sec. 130.330.

In addition to the exemption for manufacturing machinery and equipment, the State of Illinois provides a manufacturer's purchase credit (MPC) on the purchase of tangible personal property that qualifies for the manufacturing machinery and equipment exemption. See the enclosed copy of 86 Ill. Adm. Code 130.331. MPC earned on purchases of exempt manufacturing machinery and equipment must be reported to the Department on Form ST-16 Annual Report of Manufacturer's Credit Earned. The amount of MPC earned is a percentage (currently 50%) of the tax that would have been incurred on the purchase of manufacturing machinery and equipment if the manufacturing machinery and equipment exemption was not applicable. See 35 ILCS 105/3-85 (1998 State Bar Edition).

Once MPC is earned, it can be used to satisfy Use Tax or Service Use Tax liability incurred on the purchase of qualifying "production related" tangible personal property that does not qualify for the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code 130.331(b). The credit may only be applied to the 6.25% State rate of tax incurred.

READY-MIX BATCH PLANTS

Ready mix concrete batch plants and repair parts for those plants do generally qualify for the manufacturing machinery and equipment exemption, and MPC is earned on the purchases of those items. Please note that building structures, foundations, and other items permanently incorporated into real estate do not qualify for the manufacturing machinery and equipment exemption. See subsection (c)(5) of Section 130.330. In regards to trucks, machinery and equipment used in ready-mix batch plants and ready-mix concrete trucks please note, however, that the manufacturing exemption cannot be claimed on such machinery or equipment unless it is used primarily in the manufacture of tangible personal property to be sold at retail. If the machinery or equipment is primarily used to manufacture concrete that the ready-mix company itself uses in performing construction contracts, the exemption will not apply. In this case, the company is considered a construction contractor and a user of the concrete it produces, rather than a retailer of concrete.

Computers that are necessary to run production equipment which are used "primarily" (i.e. over 50% of the time) to operate exempt machinery and equipment will qualify for the exemption; and computers used primarily in operating exempt machinery and equipment in a computer assisted design or computer assisted manufacturing (CAD/CAM) system will also qualify for the exemption. See subsection (c)(3) of Section 130.330. Please note that we do not know what a "support maintenance plan for computer batch system" consists of.

Bins or silos used to store rock, sand, or other materials before the manufacturing process begins, or after the manufacturing process ends, do not qualify for the manufacturing machinery and equipment exemption and no MPC is earned on purchases of those items. See subsections (d)(4)(C) and (d)(4)(D) of Section 130.330. Likewise, front-end loaders (and repair parts for those front-end loaders) that are used to transport materials prior to the concrete manufacturing process also do not qualify for the manufacturing machinery and equipment exemption and no MPC is earned on purchases of those items. See subsection (d)(4)(C) of Section 130.330.

READY-MIX TRUCKS

The mixing of concrete by ready-mix trucks is considered to be manufacturing of concrete and ready-mix trucks do qualify for the manufacturing machinery and equipment exemption. See, Van's Material Company, Inc. v. Department of Revenue, 131 Ill. 2d 196, 545 N.E.2d 695 (1989). The repair and replacement parts, such as tires and batteries, for ready mix concrete trucks would also be exempt under the manufacturing machinery and equipment exemption. MPC will be earned on the purchase of ready-mix trucks and the repair parts for those trucks by persons who will manufacture concrete in those trucks. Please note that MPC is not generally earned on freight charges of repair parts. However, if the delivery or transportation charges are included in the selling price of the repair parts, then MPC may be earned on those charges. See subsection (c) of the enclosed copy of 86 Ill. Adm. Code 130.415.

Please note that lease payments under true leases of ready-mix trucks do not qualify for the manufacturing machinery and equipment exemption because no tax is imposed on the lease payments in Illinois, and no MPC would be earned on those lease payments. Except for automobiles leased for a period of one year or less (under the Automobile Renting Occupation and Use Tax Act), lessors of tangible personal property in Illinois under true leases are considered to be the end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. Since the lessors are considered the end users of the property and have paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax liability for the rental charges.

In Illinois, a true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease.

The alternative to a true lease is a conditional sale. In Illinois, a conditional sale is usually characterized by a nominal purchase option at the close of the lease term. This type of transaction is considered a conditional sale at the outset of the transaction making all receipts subject to Retailers' Occupation Tax. See Section 130.2010. If the leases referenced in your letter are actually conditional sales agreements, the ready-mix trucks would qualify for the manufacturing machinery and equipment exemption. MPC would be earned on the payments under conditional sales agreements at the time each payment is made. See subsection (a)(3) of Section 130.331.

RETENTION OF MACHINERY AND EQUIPMENT

For purposes of earning MPC, there is no specific retention period other than for items that qualify for the manufacturing machinery and equipment exemption. Machinery or equipment must qualify for the manufacturing machinery and equipment exemption by being used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. If the items are no longer used in a qualifying manner, they may no longer qualify for the manufacturing machinery and equipment exemption. See subsection (d)(5) of Section 130.330. In those instances, any MPC claimed as earned on the purchases of those items will not be valid.

PRODUCTION RELATED TANGIBLE PERSONAL PROPERTY

MPC may be used to satisfy Use Tax or Service Use Tax liability incurred on the purchase of qualifying "production related" tangible personal property that does not qualify for the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code 130.331(b). The credit may only be applied to the 6.25% State rate of tax incurred.

The term "production related tangible personal property" means all tangible personal property personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process described in Section 2-45 of the Retailers' Occupation Tax Act (35 ILCS 120/2-45) takes place, and all tangible personal property used or consumed by a manufacturer in research and development regardless of use within or without a manufacturing facility. See 35 ILCS 105/3-85 and 86 Ill. Adm. Code 130.331(b)(3).

The mixing of concrete by ready-mix trucks is considered to be manufacturing of concrete. Van's Material Company, Inc. v. Department of Revenue, 131 Ill.2d 196, 545 N.E.2d 695, 137 Ill. Dec. 42 (1989). Oils, greases, other lubricants, and antifreeze used in manufacturing equipment, including ready-mix trucks, would qualify as production related tangible personal property for purposes of using accumulated MPC. If the cleaning of the manufacturing machinery and equipment is required for concrete production (rather than merely for aesthetic purposes), then the cleaners used on the manufacturing machinery and equipment would also qualify as production related tangible personal property for purposes of using accumulated MPC.

Please note that the Department's administrative rules specifically state that fuels used by a manufacturer in a manufacturing facility will qualify as production related tangible personal property. See the enclosed copy of 86 Ill. Adm. Code 103.331(b)(4). To the extent that the fuel is used in the ready-mix trucks for the mixing of the concrete, it would qualify. Note that use of the fuel for purposes other than the manufacturing of the concrete, such as transportation, would not qualify. When you mix concrete while transporting the concrete to or from a job site, you will need to determine the amount of fuel actually used in the manufacturing process (i.e., the mixing of concrete) that will qualify. Then you will also need to determine the amount of fuel used in non-qualifying ways, such as transportation.

In regards to ready-mix trucks and equipment used in ready mix plants please note, however, that the manufacturing exemption cannot be claimed on such equipment unless it is used primarily in the manufacture of tangible personal property to be sold at retail. If the equipment is primarily used to manufacture concrete that the ready-mix company uses itself in performing construction contracts, the exemption will not apply. In this case, the company is considered a construction contractor and a user of the concrete it produces, rather than a retailer of concrete.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

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Associate Counsel

TDC:msk
Enc.